

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

LARRY WASHINGTON

PLAINTIFF

VS.

CIVIL ACTION NO. 3:05CV591LN

CITY OF BROOKHAVEN WATER DEPARTMENT

DEFENDANT

ORDER

This cause is before the court on the motion and supplemental motion of defendant City of Brookhaven Water Department to dismiss pursuant to Federal Rule of Civil Procedure 12 for insufficiency of service of process and for failure to state a claim upon which relief can be granted. Plaintiff Larry Washington, who is proceeding in this cause pro se, has not responded to the motion. The court, having considered the motion, concludes that it is well taken and should be granted.

It is impossible from a review of the complaint in this cause to determine what the case is about. However, according to defendant's motion, the case arises out of prior litigation between plaintiff Washington and the City of Brookhaven in both the Chancery and Circuit Courts of Lincoln County, in which plaintiff sued the City for turning off water to his property due to the presence of sewage draining in his yard. Plaintiff sued the City in the Lincoln County Chancery Court in February 2004 seeking to enjoin the City from denying him access to City water.

By order dated June 29, 2004, the court dismissed his complaint for failure to state a claim upon which relief could be granted. Thereafter, on July 16, 2004, he filed in the Circuit Court of Lincoln County a document styled "Order of Relief to be Granted Compllaint" in which he again sought to enjoin the City to provide him access to city water. In September 2004, he filed a motion for entry of default judgment against the City, which was initially granted. Subsequently, however, on motion of the City, the default judgment was set aside and the complaint was thereafter dismissed by order dated June 3, 2005 on the dual bases that the complaint failed to state a claim upon which relief could be granted and plaintiff had failed to comply with the notice provisions of the Mississippi Tort Claims Act. Plaintiff then initiated the present action by filing a document styled "Non-Hearing Motion For Default Judgment Complaint," in which he alleges his civil rights have been violated and seeks entry of a default judgment against the City. The City interprets the complaint as alleging that plaintiff's civil rights were violated when his default judgment was set aside by the Lincoln County Circuit Court. This court is less certain as to the specific basis for the complaint, factual or legal, although it does seem that in light of plaintiff's request herein for a default judgment against the City, he is in effect seeking review of the state

court's order setting aside the default judgment. Obviously, this complaint fails to state a claim upon which relief can be granted.

Accordingly, it is ordered that the City's motion to dismiss is well taken and should be granted.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 14<sup>th</sup> day of February, 2006.

/s/ Tom S. Lee  
UNITED STATES DISTRICT JUDGE